

QUESTIONNAIRE FOR DISTRICT JUDGE
AND MAGISTRATE INTERVIEWS

I. Commencement of Action and General Procedures

- A. Initial court review upon filing? (Removal review; jurisdictional review; U.S. as litigant.)

The court reviews for potential conflicts of interest and other grounds for recusal, and upon removal, reviews in attempt to confirm that jurisdiction exists.

- B. Scheduling conference procedures. (When, what format, what forms used for scheduling first conferences and pretrial conferences?)

The first scheduling conference is generally held within 60 days of joinder of issue. (see attached letter) Generally all scheduling conferences are conducted in person. If a party is located more than 100 miles from the courthouse he/she is usually given the opportunity to contact chambers with a number where he/she can be reached by telephone at the time of the scheduling conference. A schedule is generally entered at the first scheduling conference. See, IV.I. re: pretrial conferences.

- C. Telephone conference calls?

If a party is located more than 100 miles from the courthouse he/she is generally given the opportunity to contact chambers with a number where he/she can be reached by telephone at the time of the scheduling conference.

Occasionally the court will contact all parties telephonically to discuss the need for a hearing based on a pending motion.

- D. Courtroom protocol. (Where counsel tables are positioned, whether to stand when addressing the Court; tardiness; scheduling conflicts; side-bar conferences; request to approach witness, marking and handling of exhibits, use of computers, video exhibits, CDRoms, etc.)

Courtroom protocol is generally formal, with appropriate courtroom attire required.

Two counsel tables are positioned in a side-by-side manner in front of the bench.

Parties are given the option of standing or sitting when addressing the court.

Parties who are late for a scheduled event will, at a minimum, be asked to explain reasons for tardiness or nonappearance and are expected to apologize to the court and to the other parties. The court is particularly concerned about keeping a jury waiting when the jury has been told that proceedings will resume at a given time.

If a scheduling conflict arises for a hearing/conference, the party with such conflict is to contact the secretary/deputy clerk who will advise said party of one or two alternate dates. It is then this party's obligation to contact the opposing party to arrange for an alternate hearing/conference date, and then to advise chambers, both telephonically and via confirming letter, of the new date.

If electronic monitoring is used during a proceeding, no side bar conferences are held. During jury trials, or other proceedings where a court reporter is present, side bars may be held.

The court generally does not require a request to approach a witness provided that the approaching and questioning is done in a nonthreatening, nonharassing manner.

The party marks exhibits as "Defendant's" or "Plaintiff's Exhibit No. ____." The original exhibit is presented to the court, with a copy presented to the opposing party.

Video exhibits, computers, etc., are permitted during certain hearings/trials, with the necessary equipment being provided by the party presenting such exhibit.

E. Procedures for resolving scheduling conflicts. (Trial dates, motion dates; how and when brought to Court's attention; what grounds valid for rescheduling?)

If a trial date or other hearing date needs to be rescheduled, opposing counsel should be contacted, and a motion should be sent to the court as soon as the conflict arises. If the court deems the conflict to have merit, every effort is made to reschedule the trial at the earliest, mutually convenient time. If the conflict

arises within a week of the scheduled trial, hearing, etc., the secretary/deputy clerk or law clerk should be contacted telephonically with an explanation. The court will be advised and all parties will be contacted telephonically to determine if the trial or hearing date will be rescheduled.

If a party is requesting additional time for a motion date, he/she should submit a written request to the court for a specific extension of time as soon as is reasonably possible. In determining whether to grant the extension of time, it is helpful if the party wanting the extension has contacted the opposing party and received no objection.

F. Practice re assignments and references to magistrates.

n/a

G. ADR procedures.

Parties are encouraged from the onset to discuss settlement. If at any time the parties wish to mediate the case (have a settlement conference) they are to notify the court. If the parties have consented to magistrate judge jurisdiction, another judge (usually another magistrate judge) will be asked to mediate the case.

II. Civil Law and Motion Procedures

A. Days, times for calendar. (What does the judge require in terms of advance notice to the Court, if any, of motions to be presented?)

The court follows Local Rules 6.01-6.06. Occasionally a party who fails to file a responsive brief may be given an order requiring a response within a specified time period.

B. Does the judge use a short form procedure for non-dispositive motions?

The court follows Local Rules 6.01-6.06.

C. Procedures re scheduling. (Call Judge's clerk or law clerk first to set? Resetting on Court's own motion? Short matters called first? Will any orders on motions be

entered without court appearance? What types of motions? How do lawyers determine whether an appearance is required?)

Varies with circumstances. Parties will be notified if appearance is required. Orders on motions are usually entered without a court appearance. See I.E.

- D. Procedures re obtaining orders shortening time. (Court or magistrate; need for personal appearance by attorney; ex parte vs. stipulated; notice to opposing counsel?)

Varies with circumstances. Contact secretary/deputy clerk or law clerk.

- E. Calendaring TROs, preliminary injunction hearings, contempt hearings. (What arrangements required; practice re allowing evidentiary hearings?)

Varies with circumstances. Contact the secretary/deputy clerk or law clerk after a motion has been filed with the Clerk of Court. (If time is of the essence, hand deliver a file stamped copy of the motion to chambers.) If the court decides to hold a hearing, either clerk will contact the parties to set a hearing date. Magistrate judges generally do not handle TROs. Right to object to entry of such an order within 10 days of entry would render entry of such TRO to be moot because TRO is only effective for 10 days. Requests for TROs in cases assigned to magistrate judges will be sent to the district duty judge for consideration.

- F. Continuances. (Practice re granting; preferred procedures.)

Varies with circumstances. The court prefers stipulation of the parties. If no stipulation can be agreed upon, a motion for a continuance should be submitted as soon as reasonably possible. If granted, and the date of continuance warrants such, a clerk will contact the party asking for a continuance, in addition to an order being mailed to all parties.

- G. Briefing schedules. (Any special preferences or rules?)

Follow local rules unless the court directs otherwise.

- H. Oral argument. (When desired, when unnecessary? Will oral argument on motions be granted if a party requests it? Under what circumstances? Any provision for identifying particular questions for argument? Any tentative ruling procedure? Any time limits? Preferred procedure for presenting new authorities not included in briefs?)

Permitted only upon special request and for extenuating circumstances.
Occasionally the court will conduct oral argument on discovery disputes.

- I. Motion papers and briefs. (Extra copies desired? Particular format preferred? Special length provisions? Contacts with law clerks encouraged, discouraged?)

Follow local rules. No extra copies desired.

- J. Should motion papers and briefs be filed in chambers, in the clerk's office, or both?

File in the Clerk of Court's office. The only exception to this is if a particular motion is due on a specific day, and a trial or other proceeding regarding this motion is to be held the following day. Then a copy of the motion should be brought directly to chambers after having been file stamped at the Clerk of Court's.

- K. Preparation of proposed orders after rulings. (When submitted, by whom, preferred procedures re obtaining opposing counsel's approval as to form?)

No proposed orders generally required for substantive motions. Whenever possible, stipulation and proposed order required for scheduling changes.
Occasionally the court will ask one party to prepare proposed order following oral argument on, for example, discovery dispute.

- L. Other comments?

III. General Duty Judge -- Special Proceedings

- A. Preferred procedures for scheduling matters in General Duty department. (Call clerk? Regular calendar? Orders shortening time and emergency matters -- practice; ex parte vs. stipulation; notice to opposing counsel.)

This court is duty magistrate judge in January, April, July and October. Contact the Clerk of Court's office for scheduling criminal matters. Contact the secretary/deputy clerk or law clerk for procedures. In addition to duty matters, a regular calendar is held during these months.

- B. Evidentiary hearings. (How to schedule, preferred practice?)

A motion requesting such hearing should be filed with the Clerk of Court. If the court determines that an evidentiary hearing is warranted, the parties will be contacted with a court date.

IV. Criminal Law Procedures

- A. Days, times for calendar.

n/a

- B. Procedures for scheduling. (Scheduling orders; how firm are dates initially set? Preferred method of changing dates, continuances; conflict between criminal trial date and civil trial already set.)

Dates initially set are generally firm. If a change of date or continuance is requested, a motion should be sent to the court as soon as possible. If your motion is filed within two days of the date in question, a file stamped copy should be hand delivered to chambers. If time warrants such, the party will be contacted by the secretary/deputy clerk or law clerk as to the granting of such motion, in addition to an order being issued.

- C. Bail procedures.

1. When, by whom are initial bail determinations made; preferred method, content of presentation (proffer or live witnesses)

Bail determinations are set by the court (magistrate judges). Live witnesses are preferred over proffers.

2. Procedure for appeal of magistrate's ruling on bail issues.

A written objection to the district judge is required.

3. Procedure for obtaining exemption from bail conditions (trip out of town) or modification of bail provisions.

A written motion is required. Re: a trip out of town, the motion should indicate that the defendant's probation officer and Assistant United States Attorney involved in the case have been contacted and their responses to the request indicated in the motion. This will be verified by the court and an order (perhaps a margin order) will be issued if court approves the exemption. Re: modification of bail provisions; a motion is required and if the court believes a hearing is warranted the parties will be contacted by the deputy clerk or law clerk.

D. Speedy Trial Act motions and orders. (Will Court accept stipulation between Government and counsel re Speedy Trial Act time exclusion, or complex case designations? If not, how, when determined?)

Court will accept stipulations if proper proposed findings are set out in the stipulation and the court agrees with these findings.

E. Criminal evidentiary/suppression hearings. (Procedures to calendar evidentiary hearings; proffers, declarations or affidavits vs. live testimony; statements of contested and uncontested facts and issues.)

Varies with circumstances. All requests for hearings must be made by written motion. Follow standard criminal trial order distributed to parties at arraignment. The secretary/deputy clerk or law clerk will contact the parties if a hearing date is scheduled.

- F. Oral argument. (Ever considered unnecessary? Any provision for identifying particular issues for argument? Any tentative ruling system? Time limits? Preferred practice for submitting newly discovered authorities?)

Varies with circumstances. Parties may be afforded oral argument at close of hearing if issue is not complex. If issue is somewhat complex or if parties need to rely on transcript, parties will be afforded an opportunity to file post hearing briefs on an abbreviated schedule.

- G. Motion papers and briefs. Timing on filing briefs and motions in limine. (Extra copies desired? Particular format preferred? Contacts with law clerks encouraged, discouraged?)

Follow Local Rules 6.01-.06 and standard pretrial order distributed to parties at arraignment. Contact with secretary/deputy clerk and law clerk is discouraged except regarding scheduling matters.

- H. Trial briefs, jury instructions, forms of verdict. (When required from defense, preferred format and sequence, etc.)

Trial briefs are not required, but proposed instructions and form of verdict are, at a time set in advance by the court.

- I. Pretrial conferences. (When, how scheduled; preferred procedures?)

If parties consent to magistrate judge jurisdiction in misdemeanor case, parties will be notified of a date for pretrial conference.

- J. Discovery. (Deadlines; motions necessary? “Open-file” discovery practices? Reciprocity? Timing re Jenks Act and Rule 404(b) disclosures.

Dates are set at arraignment. At arraignment, government is asked on record whether it is following open file policy and, if so, when discovery will be available.

K. Entering pleas.

1. Procedure preferred re presentation of factual basis, terms of any plea bargain; when is written plea required/preferred? Will the defendant be sworn and subject to questioning at plea hearing?

If an arraignment, plea and sentencing are to be held before the magistrate judge, the Clerk of Court's office should be contacted regarding the scheduling of such hearing. A written plea agreement is preferred by the court. Defendant will be sworn and subject to questioning at the plea hearing.

2. Are nolo contendere or Alford pleas ever accepted?

Nolo contendere pleas are, under appropriate circumstances, accepted.

- L. Sentencing. (Does the judge confer with the probation officer without notice to and/or presence of counsel? Timing on objections to Presentence Report; must objections be in writing? Will the Court give notice of its intention to depart from the Guidelines -- opportunity to brief departure issues?)

Follow Rule 32, Fed. R. Crim. P. The court may confer with the probation officer without notice to/or presence of counsel.

M. Other comments?

V. Pretrial and Trial

- A. Pretrial reports - civil. (Joint vs. separate; amount of detail; any areas of particular interest to Court? Does the judge have his own form of pretrial order, does he use a standard form prescribed for use in the court as a whole, or does each case have a customized order?)

The court generally holds a pretrial conference within 10 to 14 days before the scheduled trial date. The pretrial conference is generally scheduled at the last

scheduling conference whereat the order described in Local Rule 7.06 is distributed.

- B. Identification of trial witnesses. (How much detail required in statements; any flexibility in application; expert witnesses? Can witness identified as “live” be presented through deposition?)

See Local Rule 7.06.

- C. Motion cut-off date and discovery cut-off date. (What are normal limits; under what circumstances are these dates altered?)

Motion and discovery cut-off dates are ordered at a scheduling conference.

- D. Trial continuances. (What grounds acceptable, necessary; cut-off time for motion; effect of stipulation among counsel?)

A stipulation of counsel is preferred. A stipulation or motion for a trial continuance must be filed as soon as is practicable. Grounds acceptable vary with circumstances.

- E. Are time limits imposed for trial?

Generally no.

- F. Are mini-opening statements and summations permitted?

No.

- G. Trial exhibits:

1. Pre-marking. (When required; civil vs. criminal.)

Required. Exhibits are to be marked in advance. See Local Rule 7.06.

2. Pretrial exchange of trial exhibits. (How required; must copies be provided to other side?)

See Local Rule 7.06.

3. Pretrial resolution of objections to admissibility.

Objections to admissibility should be made in writing.

4. Marking -- numbering, lettering, conventions.

Exhibits should be marked as "Plaintiff's/Defendant's Exhibit No.____"

5. Copies of exhibits for judge. (Required? If so, what format -- loose, binders, etc.)

A copy of an exhibit is required for the judge.

6. Use in opening statement -- necessity to obtain prior court approval.

No prior approval normally required.

7. Copies of exhibits for jurors? (Required/allowed? If so, what format -- loose, binders, all vs. fewer than all?)

Varies with nature of exhibit. A stipulation of the parties is preferred. If there is a dispute, the court will decide.

8. Exhibits into jury room? (How decided; general rule?)

Generally yes.

9. Preferences re scheduling and briefing in limine motions?

Motions should be filed not less than five working days prior to trial. The opposing party should file a response not less than two working days prior to trial.

H. Experts at trial

1. Exchange of identities. (When, how requested; civil vs. criminal.)

See Local Rules 7.06 and 7.07(d).

2. Exchange of reports or summaries of testimony.

See Local Rules 7.06 and 7.07(d).

3. Voir dire re qualifications (preferred procedures).

The preferred method is the reading of the expert's credentials. Qualifications should not be editorialized. The voir dire is conducted by the party calling the witness.

4. Any special rules re presentation to jury? (Summaries in lieu of direct testimony, etc.)

No special rules.

5. Other comments?

I. Jury selection process.

1. Voir dire questions.

Pursuant to Local Rule 7.06, proposed voir dire questions should be presented at the final pretrial conference.

2. Examination of jurors. (Court vs. counsel upon request of counsel.)

The court conducts voir dire. Generally, the parties may be granted leave to conduct brief follow up questioning.

3. Exercise of challenges.

No alternate jurors are selected in civil cases. All jurors remaining at the end of case (e.g., 6, 7 or 8) will participate in deliberations and verdict.

4. General practice. (How many called up at a time; general questions to whole panel, etc.)

The whole panel is addressed by the court. At end of voir dire, and after court excuses certain jurors for cause (if any) the parties will be allowed sufficient peremptory challenges to cut the panel to the size of the jury (e.g., 6, 7, 8, etc.). Panel is large enough that this allows each party to exercise well beyond minimum peremptories under the federal rules.

- J. Juror notetaking during trial. (Allowed? prohibited? cautionary instructions?)

Not permitted as a matter of course.

- K. Visual aids during trial (charts, videos, models, computer generated exhibits).

1. Use in opening statements. (Need for judicial approval? limitations? conditions on use?)

Permitted.

2. Stipulations/pretrial exchange required?

Not required, but parties are expected to arrive at stipulations that will save time during the trial, pursuant to Local Rule 7.06.

3. Court permission required during trial? (When, how, any limit on types of visual aids?)

Not required.

- L. Deposition testimony at trial. (Preferred practice; who reads what parts, etc.)

No preferred practice.

- M. Jury instructions.

1. Format, preferred sources.

Proposed instructions must be submitted at final pretrial. See Local Rule 7.06. Each should be numbered with a citation to authority. A computer disc containing the jury instructions must also be submitted.

2. Does judge have own preferred instructions? (If so, are they required? When are they provided to counsel?)

Certain general instructions are preferred by the court. Counsel can request a copy in advance of final pretrial.

3. Hearing re objections and making record.

A jury instruction conference is held toward the close of trial, at which time objections may be made.

4. When is jury instructed? (Any pre-instruction at commencement of case? Before or after argument, or both?)

Jury is given pre-instructions at commencement (before opening statements) of case on general principles and procedures. At close of case, jury generally instructed after closing arguments.

5. How is jury instructed? (Orally only? Are transparencies of the instructions used as the judge reads? Are copies of instructions given to jurors during deliberation?)

Instructed orally. A copy of the instructions are generally given the jurors during deliberation.

N. Closing argument -- ground rules. (Where to stand; what can be used, e.g., exhibits, blowups of instructions, blowups of trial testimony; preferred method of handling objections during argument; any special rules re what can be said about instructions; time limits?)

No special rules, but time limits may be imposed.

VI. Discipline and Sanctions

- A. Civil matters -- Rules 11, 16, 26, etc.
- B. General sanctions under 28 U.S.C. 1927 (when imposed, what sort of hearing held, what types of notice given?)
- C. Criminal matters.

Re: A. B. and C. Discipline and sanctions vary widely, depending on the nature of the offense. Parties who are late or fail to appear for a scheduled event will, at a minimum, be asked to explain reasons for tardiness or nonappearance and are expected to apologize to the court and to the other parties. Occasionally, the court will impose a fine and, in lieu of Rule 11 sanctions, may assess costs. The court is particularly concerned about keeping a jury waiting when the jury has been told that proceedings will resume at a given time.

VII. Settlement and Sentencing

- A. Civil settlement conferences.

- 1. When, how set? (Routinely? Only as requested? At what stage of the proceedings? How many times?)

If the proceeding is before this court, and a settlement conference/mediation is requested, the court will contact another magistrate judge to conduct the settlement conference/mediation. That court will then set a time for such settlement conference/mediation.

If this court is asked to conduct a settlement conference/mediation by another magistrate judge or district judge it will generally do so. The court will set a date and time for the settlement conference/mediation and the attached order will be sent to all parties. If deemed appropriate by the court, a further date may be scheduled at the first settlement conference/mediation.

2. Before whom? (Trial judge? Magistrate? Another district judge?)

see above

3. Settlement conference statements, procedures. (Written statements required/desired? Are they filed? Must clients be present? What format for conference? Use of computer-generated and video materials at conference?)

See attached order. Generally, computer-generated and video materials are not permitted unless prior authorization of the court is received.

4. Any special procedures? (Early Neutral Evaluation? Special arbitration procedures? Mediation? Rent-a-judge? Mini-trial?)

See above re: mediation.

B. Criminal matters.

1. Sentencing memoranda (preferences).

Not required.

2. Resolution of factual disputes on sentencing.

See Rule 32, Fed. R. Crim. P.

VIII. Ex Parte Communications

- A. Communications between Court and party. (Any circumstances when permitted; clerk/law clerk involvement?)

No **ex parte** communications between the parties and the court or court staff are permitted. An exception to this would be discussion of scheduling issues.

- B. Communications between Court and state court on related cases.

None

C. Differences between civil and criminal?

None

IX. Any other comments?

- a)
- b)
- c)
- d)